

### Remarks

#### **Support for Amendments**

The amendment to the priority claim is supported by the specification and preliminary amendment as filed, as well as the declaration filed with the application, and thus does not constitute new matter.

#### **Claim Rejections – 35 U.S.C. § 102(e)**

The Patent Office rejected claims 1, 9, 11-18, and 20-22 under 35 U.S.C. 102(e) as being anticipated by Balch et al., US Patent No. 6,331,441 ("the 441 patent"). The Applicant traverses this rejection

The '441 patent was filed December 21, 1998 as a divisional of US application serial number 09/002,170, which was filed on December 31, 1997, which claimed priority to US provisional patent application serial number 60/034,627, which was filed December 31, 1996. Thus, the earliest claimed priority date for the '441 patent is December 31, 1996.

The present application is a continuation of US patent application serial number 08/865,341 filed May 27, 1997, which claims priority to US provisional patent application serial number 60/018,696, which was filed May 30, 1996. Therefore, the earliest claimed priority date of the present application is May 30, 1996, which pre-dates the earliest claimed priority date of the '441 patent.

In order for a patent to be a proper 35 USC 102(e) reference, it must be a patent granted on an application for patent by another filed in the United States **before the invention by the applicant for patent**. See 25 USC 102(e)(2) and MPEP 2136. At best, the critical date for the '441 patent to serve as a 102(e) reference is December 31, 1996.

A patent applicant can overcome a 35 USC 102(e) rejection by perfecting a claim to priority under 35 USC 119(e) on an application that pre-dates the asserted 102(e) art. (See MPEP 706.02(b)(F). The present application was filed claiming priority to US provisional application 60/018,696, which was filed May 30, 1996 (see the attached copy of the declaration). The Applicants are herewith amending the specification to accurately reflect the priority claim. Thus, the Applicants have perfected a claim to priority under 35 USC 119(e) on an application with a filing date of May 30, 1996, which predates the earliest claimed priority date of the '441 patent. The 60/018,696 provisional application discloses and supports the claims presently pending in the instant application. Therefore, the '441 patent is not a proper 102(e) reference, and the Applicant respectfully requests reconsideration and withdrawal of the rejection.

#### **Claim Rejections – 35 U.S.C. § 103**

The Patent Office rejected claims 10 and 19 under 35 USC 103(a) as being obvious over the '441 patent in light of the Cherkuri reference. The Applicant traverses this rejection.

Under 35 USC 103(a), a patent cannot be obtained if the invention is obvious in light of the **prior art**. The '441 patent cited by the patent office in making the obviousness rejection of claims 10 and 19 is not prior art to the instant application, as discussed above. Therefore, the '441 patent is not a proper 103(a) reference, and the Applicant respectfully requests reconsideration and withdrawal of the rejection.

#### **Conclusion**

In view of the remarks above, the application is considered to be in good and proper form for allowance. Therefore, the Patent Office is respectfully requested to pass the application to

issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

Dated:

5/20/03



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